

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1520 OF 1995

1. Shri Mohanlal Bapubhai Shah	.
2. Shri Arvind Mohanlal Shah	.
both businessman, residing at	.
Ratanjadev Building, Mahavirnagar	.
Sangli 416 416	.. Petitioners.
Vs.	.
1. The Collector and District	.
Magistrate, Sangli	..
2. Secretary, Home Department	.
(Special) Mantralaya	.
Mumbai 400 032	..
3. Shri Vijay Ganshyam Bajaj	.
Ghanshyam Cloth Stores, Kapadpeth,	.
Sangli 416 416	..
4. Government of Maharashtra	.
(through the Secretary, Home	.
Department (Special), Mantralaya	..
5. Shri S.C. Karandikar	.
Residing at Sabane Building,	.
Opp: Laxmi Market,	.
Miraj 416 410	..
6. Shri Prasad Laxman Retharekar	.
residing at Radhakrishna Vasahat	.
Near Sangli S.T. Stand, Sangli	.. Respondents

Shri N.V. Walawalkar for the petitioners.	.
Mrs. S.S. Bhende AGP for respondent nos. 1, 2 and 4.	.
Shri G.S. Godbole for respondent no. 3.	.
Shri S.G. Karandikar for respondent nos. 5 and 6.	.

CORAM : B.H. MARLAPALLE & D.B. BHOSALE, JJ. .

DATED : May 4, 2006. .

ORAL JUDGMENT (PER B.H. MARLAPALLE, J.)

. The petitioners who are father and son respectively had entered into a partnership with late Shri Ghanshyam Bajaj sometime in 1979 for running the business of Cinema exhibition. The petitioners had offered their land free of cost on which third partner i.e. Shri Ghanshyam Bajaj

constructed a cinema theatre and it would be run by the partnership firm in such a way that the petitioners would have 25% share in the profit and 75% will go to Shri Ghanshyam Bajaj. Similarly, it was agreed that the share of the partners in the partnership property i.e. Cinema Theatre and land appurtenant thereto would also be in the same ratio i.e. 75% for Shri Ghanshyam Bajaj and 25% for the petitioners. Shri Ghanshyam Bajaj obtained licence of Trimurti Theatre under the Maharashtra Cinemas (Regulation) Rules, 1966 and had started exhibition of the cinemas. There was some dispute between the partners in the year 1984 and, therefore, the present petitioners filed Special Civil Suit No.530 of 1984 in the Court of Civil Judge, Senior Division, at Sangli for accounts of the partnership business as well as for appointment of the Receiver to be incharge of the partnership assets. It was alleged that Shri Ghanshyam Bajaj had committed fraud and misappropriated the amounts of the partnership firm and made profits by utilising the partnership property to the detriment of the partnership. The trial Court had allowed the application for appointment of the Court Receiver by its order dated 21st March, 1989 and the same came to be challenged by Shri Ghanshyam Bajaj in Miscellaneous Civil Appeal No.92 of 1989 which was allowed by the Lower Appellate Court. The

petitioners, therefore, approached this Court in Writ Petition No.3437 of 1992 and subsequently Shri Ghanshyam Bajaj died on 27.9.1992. Though the writ petition was admitted on 4.8.1994, we are informed that as at present the said petition does not survive.

2. It appears that Special Civil Suit No.83 of 1994 has been filed by the petitioners in the Court of Civil Judge, Senior Division, Sangli for dissolution of the partnership and for various consequential reliefs. By the order passed by the trial Court two learned advocates have been appointed as the Court Receiver, who have been impleaded as respondent no.5 and 6 in the instant writ petition and presently they are responsible for the management of Trimurti Theatre including its business and the accounts are being submitted to the trial Court. It appears that on the demise of Shri Ghanshyam Bajaj on 27.9.1992, respondent no.3 started running the theatre and he subsequently applied for transfer of licence in his name. It is the case of the petitioners that he had addressed a letter to respondent no.1 on 10.12.1993 and to respondent no.2 on 19.4.1994 pointing out that the theatre was the property of the partnership firm and, therefore, the renewal of the licence was required to be made in favour of

the partnership firm. It is alleged that respondent no.1 granted licence in the name of respondent no.3 on 12.7.1992 without taking into consideration the objections raised by the petitioners and, therefore, this petition challenging the order of granting licence to respondent no.3.

3. While admitting the petition the prayer for interim relief was refused and as noted earlier as of now respondent no.3 does not have any say in the management and running of Trimurti Theatres. We, therefore, called upon the learned counsel for the respective parties to explore the possibility of amicable settlement, by taking into consideration the partnership deed for sale of the theatre property, the highest amongst the partners would be eligible to claim take over of the said property. As at present respondent no.3 seems to be more keen in taking over the cinema theatre and the property of the partnership as compared to the petitioners, for whatever reasons and, therefore, the properties worth has to be assessed as at present. It would be in the interest of the parties that public tenders are invited for disposal of the partnership property which has been set out in the pending suit i.e. Special Civil No.83 of 1994 and the learned counsel for the parties have persuaded them and

their acceptance has been obtained for the said purposes so that the future disputes in the transactionns do not arise and in any case in the pending suit, the share in of the profits till the suit properties are disposed, will be decided in the pending suit on the basis of the partnership deed.

4. We, therefore, direct that the Court Receiver will appoint, to begin with, the valuer to determine market price of the suit property, such appointment shall be done before 31st May, 2006 and the valuer will submit his report by 15th June, 2006. The Court Receiver shall then proceed to invite public tenders by fixing minimum price of the suit property on the basis of the valuer's report to be received by them and the Court Receiver also will take appropriate steps to cause publicity for the tender at the State level as well as in the neighbouring districts of Karnataka State. The said property would undoubtedly be sold to the highest bidder. However, while inviting the tenders, the Court Receiver will stipulate in the tender the reserved price for the bid, atleast 10% bid amount shall be remitted by way of banker's cheque/Demand Draft alongwith the tender so submitted in the sealed envelope and in favour of the Court Receiver. Time to submit the tenders

would be generally about four weeks and after the last date of tender is over, the Court Receiver will open the tenders in presence of the petitioners and the respondents as well as the Registrar of the Court, in addition to the parties who have submitted their tenders. The Court Receiver then shall prepare their report and place before the learned Judge of the trial Court to finalise and accept the highest bidder. Needless to mention that the petitioners and respondent nos.3 will be at liberty to participate in the bid. In case a successful tenderer fails to deposit the tender amount after his tender is accepted and within a fixed period, the deposited amount of 10% shall be liable to be forfeited and shall stand deposited in the pending suit. The suit property shall be then offered to the next highest bidder but in the same manner. We also wish to clarify that respondent no.3 will not claim any equity while participating in the bid, only because the licence of Trimurti Theatre stands in his name as of today. In case the highest bid is less than the reserved price, the learned Judge of the trial Court and assisted by the Court Receiver shall dispose off the property by private treaty.

5. The petition is disposed off in terms of the above directions. No costs.

(D.B.BHOSALE, J.)

(B.H.MARLAPALLE, J.)